

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
Bky Case No. 04-43907-NCD

Rodney F. Breiwick,

**VERIFIED NOTICE OF HEARING AND
MOTION OBJECTING TO CLAIMED
EXEMPT PROPERTY**

Debtor(s).

TO: The United States Bankruptcy Court, the United States Trustee, the debtor, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002 (none):

1. John R. Stoebner, Trustee herein, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. This proceeding arises under 11 U.S.C. § 522 and Local Rule 4003-1(a).

3. The Court will hold a hearing on this objection on October 6, 2004, at 10:30 a.m. in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

4. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **If no response is timely served and filed, the Court may grant the relief requested without a hearing.**

5. The undersigned trustee hereby objects to the debtor's claim that the following property is exempt under the applicable exemption statute:

a. 9.90 acres homestead real property bought in 1999, legally described on Schedule C attached hereto and incorporated herein by reference in Anoka County, Minnesota, claimed exempt to the extent of \$79,078.81 under MSA §§ 510.01 and 510.02.

b. 2 – 1998 Skidoos; a 440 and a 670, claimed exempt to the extent of \$20,000.00 under MSA § 550.37 (24).

6. The objection is made for the following reasons:

a. Upon information and belief, the size of the homestead exceeds ½ acre. Accordingly, the exemption in the homestead should be disallowed.

b. There is no exemption available under MSA § 550.37 (24) for snowmobiles. Accordingly, the exemption should be disallowed.

Dated: September 7, 2004

/e/ John R. Stoebner
John R. Stoebner, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

John R. Stoebner, being duly sworn, says that he is the Chapter 7 Trustee in this action, that he has read this Verified Notice and Objection To Claimed Exempt Property and that it is true of his own knowledge, to the best of his information.

/e/ John R. Stoebner
John R. Stoebner

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In re Rodney F. Breiwick, Case No. _____
Debtor. (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- ☐ 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- ☒ 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
2 -'98 Skidoos; a 440 and a 670	MSA § 550.37(24)	20,000.00	3,000.00
2000 Felling FT-16GN trailer	MSA § 550.37(6)	1,500.00	1,500.00
9.90 acres homestead real property bought in '99; legal: The East Ten (10) rods of the West Twenty (20) rods of the Southwest Quarter of the Northeast Quarter (SW 1/4 of NE 1/4) of Section Eleven (11), Township Thirty-two (32), Range Twenty-three (23), and the South Forty (40) rods of the East Twenty (20) rods of the West Forty (40) rods of the Southwest Quarter of the Northeast Quarter (SW 1/4 of NW 1/4) of Section Eleven (11), Township Thirty-two (32), Range Twenty-three (23), Anoka County, Minnesota. Excepting therefrom: Parcel 42, as shown on the County Highway Right-of-Way Plat No. 6, being a part of the Southwest Quarter of the Northeast Quarter of Section 11, Township 32, Range 23, Anoka County, Minnesota	MSA §§ 510.01, 510.02	79,078.81	228,100.00
clothes	MSA § 550.37(4)(a)	100.00	100.00
pension from prior job	MSA § 550.37(24)	27,872.49	27,872.49

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UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on September 7, 2004, I mailed copies of the attached **Trustee's Verified Notice of Hearing and Motion Objecting to Claimed Exempt Property and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Rodney F. Breiwick
3824 Crosstown Blvd NE
Ham Lake, MN 55304

Larry LaRoue, Esq.
312 Central Avenue, Suite 478
Minneapolis, MN 55414

U.S. Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Executed on: September 7, 2004

/e/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stoeber &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
Bky Case No. 04-43907-NCD

Rodney F. Breiwick,

Debtor(s).

ORDER SUSTAINING OBJECTION TO CLAIM OF EXEMPTION

At Minneapolis, Minnesota, October 6, 2004.

The objection of the trustee to the debtor's claim that the following property is exempt under the listed exemption statute: 9.90 acres homestead real property bought in 1999, legally described on Schedule C attached hereto and incorporated herein by reference in Anoka County, Minnesota, claimed exempt to the extent of \$79,078.81 under MSA §§ 510.01 and 510.02; and 2 – 1998 Skidoos; a 440 and a 670, claimed exempt to the extent of \$20,000.00 under MSA § 550.37 (24), came duly on for hearing on October 6, 2004. Appearances, if any, were as noted in the record.

Upon said objection and for cause shown, and upon all the files, records, and proceedings herein,
IT IS ORDERED,

1. The debtor's claim of exemption in the 9.90 acres homestead real property bought in 1999, legally described on Schedule C attached hereto and incorporated herein by reference in Anoka County, Minnesota, is disallowed as to that portion of the real estate that exceeds one-half of an acre.
2. The debtor's claim of exemption in the 2 – 1998 Skidoos; a 440 and a 670 is disallowed.

Dated: _____, 2004

Nancy C. Dreher
United States Bankruptcy Judge